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HB 1685
RELATING TO ENVIRONMENTAL IMPACT STATEMENT

Statement for
House Committee on
Planning, Energy and Environmental Protection
Public Hearing - February 23, 1989

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HB 1685 creates an administrative appeal procedure to allow for an aggrieved person to petition an agency for reconsideration of a determination that an Environmental Impact Statement (EIS) is or is not required and establishes a shorter time schedule for the initiation of judicial appeals of such determinations.

Our statement on this bill does not represent an institutional position of the University of Hawaii.

Those of us who work regularly with the EIS system and the statutory requirements of HRS 343 have, for years, sought to establish a procedure for administrative appeal of EIS determinations rather than being forced to initiate costly and time consuming judicial proceedings as the only recourse to questionable determinations. While we would prefer that the presently proposed appeal procedure be to a neutral third party, such as the Environmental Council, provision for appeal to the agency issuing the determination in question is an acceptable alternative.

As drafted HB 1685 will shorten the present 60 day period within which a judicial appeal can be filed to 30 days and thus serve to speed implementation of both agency and applicant actions in the vast majority of cases where no petitions for reconsideration are submitted. It also provides an applicant with the opportunity to appeal agency determinations.

We strongly support the intent of HB 1685 and believe it will foster cooperative approaches to environmental management and will reduce costly judicial confrontations.

As drafted, HB 1685 will shorten the present 60 day period within which a judicial appeal can be filed to 30 days and thus serve to speed implementation of both agency and applicant actions in the vast majority of cases where no petitions for reconsideration are submitted. We note that it would provide an applicant as well as an aggrieved person with the opportunity for administrative appeal of agency determinations.

For your information, over the past 18 weeks since November 8, 1988, 91 negative determinations have been published in the OEQC Bulletin. The Environmental Center undertook a review of seven Environmental Assessments prepared for these negative determinations on the basis of the information provided in the Bulletin that indicated that they were either types of projects known to frequently generate significant impacts and/or they were located in particularly sensitive areas. Of these seven reviews, we provided additional information to the agencies involved in five cases and recommended that an Environmental Impact Statement be prepared in two cases.

We provide these figures to stress that the vast majority of the determinations are appropriate and that provision for administrative appeal would not flood the agencies with requests, but in fact could well shorten the environmental review process by avoiding judicial actions.

The amendment proposed on page 9, section 2, paragraph (c) would permit the office to bring judicial action in the same manner as is presently granted to the Environmental Council with regard to the acceptance of a statement required under 343-5.

However, some amendment seems necessary if HB 1685 HD 1 is to achieve the intended result. Page 7, line 7, states, "any person aggrieved by the determination shall have a 30 day period in which to petition the agency for reconsideration of the matter. However, no definition of "aggrieved" is provided. It could be argued that only those with lands or business activities directly affected by the proposed action might be judged "aggrieved" parties. However, possibly significant environmental implications to the action such as geological instability, archaeological remains, or hydrologic-water resource issues may only be identified by specialists. Consequently, we believe that the definition of "aggrieved" should be broad enough to assure that those with special expertise relative to the potential environmental impacts of a project have the opportunity to petition the agency for reconsideration of a determination. We note that under the present language of HRS 91-6 "Any interested person may petition an agency for a declaratory order as to the applicability of any statutory provision or of any rule or order of the agency."

We note that the proposed amendment from HB 1142 that would add the Office [of Environmental Quality Control] as an aggrieved party to HB 1685 HD 2, was incorporated only into Section 343-7(c) that applies to judicial proceedings on the acceptance of a statement while the entire existing definition of aggrieved party status was deleted from paragraph (b) that applies to judicial appeals of determinations. We urge that amendments to both paragraphs (b) and (c) as proposed in HB 1142 be included in HB 1685 HD 2 and that the aggrieved party provisions on page 9, lines 6-9 be retained.

With these amendments we would concur with the general intent of HB 1685 HD 2.